Copyright & U.S. Government Works

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Copyright & U.S. Government Works

Overview

- Copyright Basics
- U.S. Government Official Works
- Contracted DoD Works
- STIP Responsibility
- DoD Works in Open Literature

Copyright & U.S. Government Works

Copyright Basics

- United States Constitution. Article I, Section 8.
  - The Congress shall have the power… To promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors exclusive right to their respective Writings and Discoveries.

Copyright & U.S. Government Works

Copyright Basics

- Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works.

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Copyright Basics

- Automatic
- Published or unpublished
- Applies to original works
- “Fixed” in any tangible medium
  - “now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”

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Exclusive Rights of Copyright Holders

Title 17 USC Sections 106 and 106A

Bundle of Five Rights

- Reproduce
- Distribute
- Adapt
- Perform
- Display

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What is Not Copyrightable?

- Facts, ideas, names, titles, short phrases, column headings, blank forms, format, arrangement, typography
- Works on which the author never claimed copyright
- Works on which the term of copyright has expired
- **Official works published by the U.S. Government**

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What is Public Domain?

- Refers to the ownership status of a work which is:
  - Publicly available.
  - Not owned or protected by copyright.
- May be used by anyone, anywhere, anytime without permission, license or royalty payment.
- Public domain and public release are not synonymous

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U.S. Government Works

- USC Title 17, Sec 105
  - Copyright protection under this title is not available for any work of the United State Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

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What is a U.S. Government Work?

- USC Title 17, Sec. 101
  - A “work of the United States Government” is a work prepared by an officer or employee of the United States Government as part of that person’s official duties.

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What is a Work Made for Hire?

- A work prepared by an employee within the scope of his or her employment
- Employer-Employee Relationship Under Agency Law Supreme Court in CCNV vs.. Reid.
  - Control by the employer over the work
  - Control by employer over the employee
  - Status and conduct of employer

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Who Authors DoD Official Works?

- **DoDD 5230.9 Clearance of DoD Information for Public Release, April 9, 1996, ASD(PA).**
- Definitions: DoD Employee
  - Any DoD civilian
  - Any active duty military
  - Any Reserve or National Guard on active duty
  - Any Reserve or National Guard performing official duties while on inactive duty or while earning retirement points
  - Any faculty member and any student of an academy, college, university or school of the DoD
  - Any foreign national working for a DoD

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DoD Unofficial Works

- **DoDD 5230.9 Clearance of DoD Information for Public Release, April 9, 1996, ASD(PA)**
- Paragraph 8 - Implied Definition
  - acting in a private capacity and not in connection with official duties.
  - not done during normal duty hours or with the use of DoD facilities, property, or personnel_
  - does not use official DoD information generally not available to the public

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Contracted DoD Works

- Defense Federal Acquisitions Regulation Supplement (DFARS) standard clauses define licenses and use rights.
  - DFARS Subpart 227.4, Rights in Data and Copyrights.
  - DFARS Subpart 227.71, Section 7103-4, Rights in Technical Data. License Rights.
  - DFARS Section 252.227-7013, Rights in Technical Data - Noncommercial Items.

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Contracted DoD Works

- **DFARS Rights in Technical Data 227.7103-4 License rights**
  (a) Grant of license
  - The Government obtains rights in technical data, including a copyright license, under an irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data not granted to the Government. For technical data that pertain to items, components, or processes, the **scope of the license is generally determined by the source of funds** used to develop the item, component, or process. When the technical data do not pertain to items, components, or processes, the scope of the license is determined by the source of funds used to create the data.

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Contracted DoD Works

- **DFARS Section 252.227-7013 Rights in Technical Data - Noncommercial Items**
  - **(12) Government Purpose Rights**
    - (i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
    - (ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

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Contracted DoD Works

- **DFARS Section 252.227-7013 Rights in Technical Data - Noncommercial Items**
  - **If partially funded… (13) "Limited rights"** The rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.
  - **If fully funded……..(15) "Unlimited rights"** The rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

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Contracted DoD Works

- **DFARS 252.235-7010 Acknowledgment of Support and Disclaimer (May 1995)**
- As prescribed in 235.071(c), use the following clause: (a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms:
- **This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).**

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Contracted Works Notice of Government Rights

- This work was supported in part by the DoD. The United States Government has a paid-up royalty-free license throughout the world in all copyrightable material contained herein. All other rights are reserved by the copyright owner. Distribution A.

- This work was supported in part by DoD under Contract Number XXXXXX. The United States Government has a royalty-free license throughout the world in all copyrightable herein. All rights not grated the Government are retained by the contractor. Distribution A.

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Publishing in the Open Literature

- For Government authors, certify the work is not subject to U.S. Copyright
- For contracted works, certify and provide documentation of Government Rights.
- Include a notice or acknowledgement of Government Rights in the body of the work
- Warrant the work as original.
- Warrant that portions not original credit the source and are used with permission.

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Publishing in the Open Literatu
Collaborations/Joint Authorshi

- In the case of multiple authorship where one or more authors are Government employees but at least one author is not, the non-government author may sign the Copyright Transfer Form unless they have assigned the copyright to the Government.

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STIP Responsibility

Department of Defense Instruction 3200.14

Principles and Operational Parameters of the DoD Scientific and Technical Information May 13, 199, Documentation and Dissemination of DoD R&E and Studies Effort, 5.4.9

- Ensure that all significant scientific or technological observations, findings, recommendations, and results from DoD endeavors, including those generated under contracts, grants and other instruments that are pertinent to the DoD mission or contribute to the DoD and/or the national scientific or technological base are recorded as "technical documents." Internal and contractual procedures shall ensure that copies of such documents are made available to the DoD R&E community...

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STIP Responsibility

Department of Defense Instruction 3200.14

s and Operational Parameters of the DoD Scientific and Technical Information P
13, 199, Documentation and Dissemination of DoD R&E and Studies Effort, E.4

- The preparation and dissemination of R&E studies efforts in the form of journal articles, poster papers at symposia, and other means external to DoD shall not be in lieu of providing those same documents to DTIC.

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STIP Responsibility

- **DFARS 252.235-7011**
  Final Scientific or Technical Report (Sep 99)
- As prescribed in 235.071(d), use the following clause:
- The Contractor shall submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center (DTIC), Attn: DTIC-OC, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-6218.
- The Contractor shall include a completed Standard Form 298, Report Documentation Page, with each copy of the report. For submission of reports in other than paper copy, contact the Defense Technical Information Center, Attn: DTIC-OC, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-6218.

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STIP Responsibility

- DoD employees and DoD contractors and grantees should submit STI journal articles and conference paper to DTIC.
- DTIC will no longer accept the SF298, Report Documentation Page, without the document.
  - No “Announcement Only.”

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Bottom Line

- If you are a DoD employee, you cannot claim or assign rights to your official work. Your work is not eligible for copyright.

- In the case of work performed under a U.S. Government contract or grant, the U.S. Government has a royalty-free license to reproduce all or portions of a work as stipulated in the contract and to authorize others to do so for official U.S. Government purposes.

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Other Copyright Topics

- Digital Millennium Copyright Act
- DoD Web Administration Policies
- CENDI Copyright Working Group

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Digital Millennium Copyright A

Public Law 105-304 , 28 Oct 98

- TITLE I: WIPO TREATIES IMPLEMENTATION
  - **Circumvention of Copyright Protection Systems**.
    - Exceptions: Reverse Engineering, Enforcement and Intelligence Activities, Encryption Research, Regarding Minors, Nonprofit Libraries, Archives, and Educational Institution
  - **Copyright Management Information**
  - **Limitations on Liability**
- TITLE II: ONLINE SERVICE PROVIDER LIABILITY
- TITLE III: COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

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Web Site Administration Policies & Procedures, 25 Nov

- Part II - Procedures. Paragraph 3.5.5 - Information Posting Process, Content Review, Copyrighted Material.
- Copyrighted material will be used only when allowed by prevailing copyright laws and may be used only if the materials relate to the Component's mission. Consult with Counsel when using any copyrighted material.

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CENDI Copyright Task Group

- TASK -- Develop plain English guidelines to Frequently Asked Questions (FAQ)
  - Authorship versus government rights
  - Copyright & contracted works
  - Use of copyrighted information in government publications and databases
  - Government use of copyrighted information
  - Use of government information in copyrighted works
  - Copyright & websites
  - Permissions, releases & licenses

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References

- **Title 17, U.S. Code Copyright Act of 1976**
  http://lcweb.loc.gov/copyright/title17/
- **Berne Convention**
  http://www.wipo.org/eng/main.htm
- **The Sonny Bono Copyright Term Extension Act Public Law 105-298, 27 Oct 98**
  http://lcweb.loc.gov/copyright/legislation/s505.pdf
- **Digital Millennium Copyright Act Public Law 105-304 , 28 Oct 98**
  http://lcweb.loc.gov/copyright/penleg.html#pl105-304

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References

- **U.S. Copyright Office**
  http://lcweb.loc.gov/copyright
- **U.S. Copyright Office Circulars**
  http://lcweb.loc.gov/copyright/circs/
- **When Works Pass Into the Public Domain**
  http:/www.unc.edu/~unclng/public-d.htm
- **Federal Library and Information Center Committee (FLICC) /Library of Congress General Counsels Forum**
  http://lcweb.loc.gov/flicc/gc/gcforum.html
- **University of Texas Crash Course in Copyright:**
  http://www.utsystem.edu:80/ogc/intellectualproperty

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References

- **DoDD 5230.9 Clearance of DoD Information for Public Release, April 9, 1996, ASD(PA)**
  http://www.defenselink.mil/admin/dd5230_9.html
- **DFARS Section 252.227-7013 Rights in Technical Data - Noncommercial Items**
  http://www.acq.osd.mil/dp/dars/dfars/html/252227.htm
- **DoDI 3200.14 Principles and Operational Parameters of the DoD Scientific and Technical Information Program, May 13, 1997**
  http://www.dtic.mil/stinet/stinfo/tab4.pdf
- **DoD Web Site Administration Policies & Procedures, 25 Nov 98** http://www.defenselink.mil/admin/about.html#WebPolicies